

"Domino" are very different.

#### PRIOR ART

42. Musicologists providing analyses and opinions in music copyright issues review music that existed prior to the creation of Plaintiff's song. It is my understanding that Plaintiff's song, "BRC", was copyrighted in 2008. As noted in Paragraph 6 above, music that pre-dates 2008 is referred to as "prior art". Analysis of prior art directly bears upon the issues of whether or not (1) expression in "Domino" was copied from "BRC" and (2) any similarities shared by "Domino" and "BRC" represent pre-existing expression.

43. While "BRC" and "Domino" have similar Verse melodies, (1) the Verse melody in "BRC" is not nearly identical to the Verse melody in "Domino" (See Paragraphs 25-40 above), (2) on the basis of a preliminary search for prior art, I found four songs that, in the aggregate, establish that the similarity in the Verse melodies in "BRC" and "Domino" represents pre-existing expression used in Verse melodies prior to 2008 and was thereby available to the writers of "BRC" and "Domino", and (3) I also found two additional songs, one co-written by Max Martin and one co-written by Max Martin and Lukasz Gottwald (co-writers of "Domino") which incorporate melodic expression that is similar to the Verse melodies in "BRC" and "Domino". Analysis of these six prior art songs firmly supports my findings that (a) the similar expression in the Verse melodies in "BRC" and "Domino" was created independently by the writers of "Domino" and not copied from "BRC" and (b) the similarity between "BRC" and "Domino" represents pre-existing expression.

The prior art song, "Rush," singularly establishes that the similarity in "BRC" and "Domino" represents pre-existing expression

44. "Rush," as recorded by Big Audio Dynamite, was #1 on the *Billboard* "Modern Rock Tracks" chart for four weeks in 1991. I analyzed the "single" version attached as Track 6 on **Audio Exhibit 1**. "Rush" singularly establishes that the similarity in the Verse melodies in "BRC" and "Domino" represents pre-existing

expression.

45. The similarity in the Verse melodies in "BRC" and "Domino" is also found in the Verse melody in "Rush". In Musical Example 3 below, the vocal melody in bars 1-8 in Verse 1 in "Rush" is placed over the vocal melody in the entire Verse 1 in "BRC", and the vocal melody in bars 1-8 in Verse 1 in "Domino". (The Verses in "Domino" and "Rush" consist of 16 bars whereas the Verses in "BRC" consist of only 8 bars.) As noted above, in keeping with musicological practices, the melodies in "Rush", "BRC", and "Domino" are transcribed in the same key (D major) to facilitate the comparison.

46. There is a similarity in the melodic phrase structures in Verse 1 in "BRC" and the first 8 bars in Verse 1 in "Rush" and "Domino". Each melodic phrase is two bars in duration consisting of a pickup in the first bar, ending in the second bar. There are four, 2-bar phrases in Verse 1 in "BRC" and in bars 1-8 in Verse 1 in "Rush" and "Domino" as transcribed in Musical Example 3 below. Thus, the similarity in melodic phrase structures between "BRC" and "Domino" (See Paragraph 27 above) is also embodied in "Rush."

47. Now turning to the *pitch sequences* in the Verses in "Rush", "BRC", and "Domino", the pitch sequences in each corresponding 2-bar melodic phrase in Verse 1 in "Rush", "BRC" and "Domino" are charted immediately below as scale degrees. (See Paragraph 28 above for an explanation of the use of scale degrees to analyze pitch sequences in melodies)

	<u>Phrase 1: pickup bar</u>	<u>Phrase 1: second bar</u>
"Rush":	1 6 1 6 1 1	3
"BRC":	6 1 6 1 6 1 1	3 2 3
"Domino":	6 1 6 1 6 1	3 2 3 5

## MUSICAL EXAMPLE 3

Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Rush" and "Domino" (in D major)

"Rush" 0:00

If I had my time a - gain

"Bright Red Chords" (2010) 0:22

I put the need - le in the groove

"Domino" 0:06

I'm feel - ing sex - y and free

3

I would do it all the same and not change a sing - le

to a song that fits the mood I watch the re - cord spin a -

like glit - ter's rain - ing on me You're like a shot of pure

6

thing ev - en when I was to blame

round in - to a wall of sound yeah

gold I think I'm 'bout to ex - plode



	<u>Phrase 2: pickup bar</u>	<u>Phrase 2: second bar</u>
"Rush":	1 6 1 6 1 1	6 5
"BRC":	1 1 3 6 1 1	6 5
"Domino":	6 1 6 1 6 1	1 6 5

	<u>Phrase 3: pickup bar</u>	<u>Phrase 3: second bar</u>
"Rush":	1 6 1 6 1 5	3
"BRC":	6 1 6 1 6 1 1	3 2 3
"Domino":	6 1 6 1 6 1	3 2 3 5

	<u>Phrase 4: pickup bar</u>	<u>Phrase 4: second bar</u>
"Rush":	1 6 1 6 1 1	6 5 6 1
"BRC":	1 b3 6 6 6	6 5 6 1
"Domino":	6 1 6 1 6 1	1 6 5

48. As charted immediately above, there is greater similarity in the pitch sequences in "Rush" and "BRC" than between "BRC" and "Domino." With respect to Phrase 1, the pitches in the pickup bar oscillate between scale degrees 6 and 1 in all three songs but the last two pitches in the pickup in "Rush" and "BRC" are on scale degree 1; this is not the case in "Domino". Moreover, Phrase 1 ends on scale degree 3 in "Rush" and "BRC", but not in "Domino".

49. In Phrase 2, the last two pitches in the pickup bar in "Rush" and "BRC" are scale degree 1, but not in "Domino". Importantly, bar 2 is *identical* in "Rush" and "BRC", but bar 2 in "Domino" is not identical to bar 2 in "Rush" and "BRC".

50. In Phrase 3, while the pitches in the pickup bar oscillate between scale degrees 6 and 1 in all three songs, "Rush" includes scale degree 5 but "BRC" and "Domino" do not. On the other hand, Phrase 3 ends on scale degree 3 in "Rush" and "BRC", but not in "Domino".

51. In Phrase 4, while the pitch sequences in the pickup bars are no more similar between "Rush" and "BRC" as they are between "BRC" and "Domino", importantly, the 6-5-6-1 pitch sequence in bar 2 is *identical* in "Rush" and "BRC", but the pitch sequence in bar 2 in Phrase 4 is quite different in "Domino".

52. On that basis, I found that the pitch sequences in Verse 1 in "BRC" are more similar to the pitch sequences in bars 1-8 of Verse 1 in "Rush" than between "BRC" and bars 1-8 of Verse 1 in "Domino".

53. I now turn to an analysis of the melodic *rhythm*, i.e., the rhythmic durations and metrical placement within the bars, in the corresponding 2-bar melodic phrases in Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Rush" and "Domino". As illustrated in Musical Example 3 above, the pickup notes begin on the second half of beat 1 in every phrase in "Rush" and "Domino" but by way of difference, the pickup notes begin on beat 2 in Phrase 2 and Phrase 4 in "BRC". On the other hand, the first note in each pickup bar in "Rush" is "tied" (i.e., held over) creating a "syncopation" (i.e., interruption of the basic pulse) which is not in the pickup bars in "BRC" and "Domino". By further way of difference, the pickup bar in Phrase 2 in "Rush" includes 2 sixteenth notes and an additional syncopation at the second half of beat 3 which is not in Phrase 2 in "BRC" or "Domino". However, the melodic rhythm in bar 2 in Phrase 2 is *identical* in "Rush" and "BRC", but not in "Domino": bar 2 in Phrase 2 in "Rush" and "BRC" consists of 2 *eighth* notes, but in "Domino" bar 2 in Phrase 2 consists of 2 *sixteenth* notes followed by 1 eighth note. Moreover, the melodic rhythm in bar 2 in Phrase 4 is *identical* in "Rush" and "BRC", but not in "Domino": bar 2 in Phrase 4 in "Rush" and "BRC" consists of 4 *eighth* notes, but in "Domino" bar 2 in Phrase 4 consists of 2 *sixteenth* notes followed by 1 eighth note. Thus, although there is greater rhythmic similarity in the pickup bars in Phrases 1-4 in Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Domino" than in the pickup bars in "Rush", there is greater rhythmic similarity in every bar 2 in Phrases 1-4 in Verse 1 in "BRC" and "Rush" than in bars 1-8 in Verse 1 in "Domino". Moreover, as analyzed in Paragraph 36 and illustrated in Musical Example 2 above, the differences in melodic rhythm in bars 9-14 in Verse 1 in "Domino" and Verse 1 in "BRC" are far greater than

the differences in melodic rhythm between "Rush" and "BRC".

54. The *melodic development* in Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Rush" is as different as the differences in melodic development in "BRC" and bars 1-8 in Verse 1 in "Domino." Furthermore, the overall structure in Verse 1 in "BRC" (which consists of 8 bars) and the overall structure in Verse 1 in "Rush" (which consists of 16 bars) is as different as the overall structure in "Domino" (which consists of 16 bars).

55. The harmony is slightly more similar in Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Rush" than between the harmony in Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Domino". For example, "BRC" and "Rush" both incorporate chords built on scale degrees 1 and 4 but "Domino" does not. However, this harmonic similarity between "BRC" and "Rush" represents generic and commonplace harmonic expression.

56. The meter in "Rush", "BRC", and "Domino" is 4/4.

57. The performance speed or "tempo" of "BRC" is 120 BPM and it is 124 BPM in "Rush", which is more similar than the performance speed or tempo of "BRC" (120 BPM) and "Domino" (127 BPM).

58. "BRC" and "Rush" use hi-hat cymbals in the rhythm that accompanies the vocal melody in their respective Verses, but "Domino" does not.

59. The underlying rhythm in "BRC" and "Rush" always includes the snare drum playing on beats 2 and 4 (termed the "backbeats") in their respective Verses, but "Domino" does not incorporate any snare drum on the backbeats in bars 1-8 in Verse 1.

60. On the basis of the analysis in Paragraphs 44-59 above, I found that the *combination* of similarities is greater between Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Rush" than it is between Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Domino".



61. The similarities and differences between Verse 1 in "BRC" and bars 1-8 in Verse 1 in "Rush" and "Domino" analyzed above are largely, but not wholly, present with respect to Verse 2 in "BRC" and bars 1-8 in Verse 2 in "Rush" and "Domino". Some of the melodic rhythms and pitch sequences are changed in Verse 2 as compared with Verse 1 in each song. Nonetheless, the overall balance of similarities and differences between Verse 1 in "BRC", "Domino", and "Rush" is largely found in the respective Verse 2 in each song.

62. The melodic similarities in Verse 1 in "BRC" and bars 1-8 in "Rush" are demonstrated in Tracks 1 and 2 on **Audio Exhibit 2** attached to this report. Track 1 begins with bars 1-4 in Verse 1 in the 1991 "Rush" sound recording followed by bars 1-4 in Verse 1 in "BRC". After a 2-second silence, that side-by-side placement is repeated on Track 1. Track 2 begins with bars 1-8 in Verse 1 in "Rush" followed by the entirety of Verse 1 (bars 1-8) in "BRC". After a 2-second silence, that side-by-side placement is repeated on Track 2.

Three additional prior art songs further undercut a claim that the similarity in "BRC" and "Domino" represents expression that is unique to "BRC"

63. In addition to "Rush," released in 1991, three additional prior art songs further support my finding that the similarity in "BRC" and "Domino" represents pre-existing expression. Those additional prior art songs are: "Out o' Sight", "Fire", and "It Must Be Magic".

64. "Out of Sight" was a "single" performed by James Brown and released in 1964. Although "Out of Sight" was written by James Brown, the "writer" on the 7" vinyl label was listed under the pseudonym "Ted Wright". A cover of James Brown's "Out of Sight" was released as "Out o' Sight" in 1965 by The Soul Setters. The Soul Setters' cover version, which I used, is attached at Track 7 on **Audio Exhibit 1**.

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From Verse 1 in "BRC", "Domino", "Out O' Sight", "Fire", and "It Must Be Magic"

**MUSICAL EXAMPLE 4**

"Bright Red Chords" (2010) 0:22  
 I put the need - le in the groove to a song that fits the mood.  
 D<sup>5</sup> F#<sup>5</sup> G<sup>5</sup> A<sup>5</sup> D<sup>5</sup> F#<sup>5</sup> G<sup>5</sup> E<sup>5</sup>

"Domino" 0:06  
 I'm feel - ing sex - y and free like glit - ter's rain - ing on me  
 D<sup>5</sup> D (sus4) D<sup>7</sup>

"Out o' Sight" 0:21  
 You got your high - heeled sneak - ers on - You're step pin' new  
 Bm D Bm D Bm D

"Fire" 0:14  
 I'm rid - ing in your car - You turn on the ra - di - o  
 Bm D Bm D Bm D

"It Must Be Magic" 0:49  
 You say my kiss - es taste like ma - gic... (well stop) That's got to be... the class sic line  
 Em<sup>7</sup> D (maj9) Em<sup>7</sup> D (maj9)

"Bright Red Chords" 5  
 I watch the re - cord spin a - round in - to a wall of sound - yeah  
 D<sup>5</sup> F#<sup>5</sup> G<sup>5</sup> A<sup>5</sup> D<sup>5</sup> D (sus4) D<sup>7</sup>

"Domino" 5  
 You're like a shot of pure gold I think I'm bout to ex - plore -  
 G<sup>7</sup> D<sup>7</sup>

"Out o' Sight" 5  
 You got your high heeled sneakers on - And you're step - pin' new  
 Bm D Bm D Bm D

"Fire" 5  
 You're pull - ing me close I just say no  
 Em<sup>7</sup> D (maj9) Em<sup>7</sup> D (maj9)

"It Must Be Magic" 5  
 Please no more pres - to chang - o now that I'm in love ba by 'Cause that would real - ly blow my mind  
 Em<sup>7</sup> D (maj9) Em<sup>7</sup> D (maj9)



65. "Fire" was written by Bruce Springsteen and recorded by him in 1978 but not released at that time. However, The Pointer Sisters recorded "Fire" for their 1978 album, *Energy*, and also released "Fire" in 1978 as a "single". The Pointer Sisters' version, attached as Track 8 on **Audio Exhibit 1**, reached #2 on the Hot 100 chart in *Billboard* magazine.

66. "It Must Be Magic", written and recorded by Teena Marie, was released in 1981 as Track 1 on her album *It Must Be Magic* and released as a "single". The album was re-released in 2002. I used the re-released recording of "It Must Be Magic" attached as Track 9 on **Audio Exhibit 1**. The album reached #2 in the United States in the *Billboard* Black Album charts.

67. In Musical Example 4 above, the opening vocal melodies in Verse 1 in "BRC" and "Domino" are placed over the opening vocal melodies in Verse 1 in "Out o' Sight", "Fire", and "It Must Be Magic". The Verse melodies in all of these songs are transcribed in the same key (D major) to facilitate the comparison.

68. There is a similarity in the melodic phrase structures in all five songs in Musical Example 4. Each melodic phrase is two bars in duration consisting of a pickup in the first bar, and ending in the second bar. There are four, 2-bar phrases in each excerpt from each song in Musical Example 4. Thus, the similarity in melodic phrase structures between "BRC" and "Domino" is also embodied in these three prior art songs.

69. Like "BRC" and "Domino", the Verse melodies in "Out o' Sight" and "It Must Be Magic" incorporate oscillation on scale degrees 1 and 6. There is limited oscillation on scale degrees 1 and 6 in "Fire." Nonetheless, the melodic similarity in Verse 1 in "BRC" and Verse 1 in "Fire" is obvious as demonstrated in Track 3 on **Audio Exhibit 2** attached to this report. Track 3 begins with bars 1-4 in Verse 1 in the 1978 "Fire" sound recording followed by bars 1-4 in Verse 1 in "BRC". After a 2-second silence, that side-by-side placement is repeated on the same Track 3.

70. The obvious similarities in the Verse melodies in the *four* prior art songs presented above—"Rush", "Out o' Sight", "Fire", and "It Must Be Magic"—are demonstrated in Track 4 on **Audio Exhibit 2**. Track 4 places the opening 4 bars in Verse 1 in "BRC" and "Domino" next to the four prior art songs. After a 2-second silence, the side-by-side placement is repeated. The order of excerpts from Verse melodies in "BRC", "Domino", and the four prior art songs on Track 4 is charted immediately below.

Track 4

"BRC"

"Rush" (1991)

"Domino"

"Out O' Sight" (1965)

"Fire" (1978)

"It Must Be Magic" (1981)

Max Martin and Lukasz Gottwald, co-writers of "Domino", co-wrote at least two songs which incorporate melodic expression that is similar to the Verse melodies in "BRC" and "Domino"

71. Max Martin co-wrote "When You're Looking Like That" (attached as Track 10 on **Audio Exhibit 1**) which was recorded by the group, Westlife, and released in 2000. The hook/title lyrics in this song are set to oscillating scale degrees 1 and 6. Moreover, the oscillation on scale degrees 1 and 6 occurs in the pickup bar in "When You're Looking Like That", which is the case in "BRC" and "Domino". The melodic phrase structure in the setting of the hook/title lyrics in "When You're Looking Like That" is the same as the phrase structure in each melodic Phrase in the Verse melodies in bars 1-8 in "Domino", namely, a pickup bar ending in bar 2. Furthermore, the five notes in the pickup bar in "When You're Looking Like That" are *identical* in (1) pitch sequence, (2) metrical placement, and (3) rhythmic duration as compared with the five corresponding notes in the pickup bars in "Domino" in Phrases 1, 2, 3, and 4 analyzed above and illustrated in Musical Example 1 above. In Musical Example 5 immediately

below, the melodic setting of the hook/title lyrics in "When You're Looking Like That" is placed below the melodies in Phrase 1 in "BRC" and "Domino". The excerpts from "BRC", "Domino", and "When You're Looking Like That" in Musical Example 5 are transcribed in D major.

### MUSICAL EXAMPLE 5

Bars 1-2 from Verse 1 in "BRC" and "Domino" and the hook/title melody in "When You're Looking Like That"

"Bright Red Chords"  
(2010)  
0:22

I put the need - le in the groove\_

"Domino"  
0:06

I'm feel - ing sex - y and free

"When You're Looking Like That"  
1:10

when you're look - ing like that

72. In addition, Max Martin and Lukasz Gottwald (co-writers of "Domino") co-wrote "I Don't Think So" (attached as Track 11 on **Audio Exhibit 1**) which was recorded by the artist, Kelis, and released in 2006. Instead of oscillation of scale degrees 6 and 1, the Verse in "I Don't Think So" begins with oscillation of scale degrees b7 and 1. Nonetheless, the basic melodic contour (i.e., the shape of the melody) is the same in the opening bars in "I Don't Know", "BRC", and "Domino" and the melodic rhythm is also similar (albeit the use of a syncopation in "I Don't Know" that is not in "BRC" and "Domino") as transcribed in Musical Example 6 immediately below. The excerpts from "BRC", "Domino", and "I Don't Think So" in Musical Example 6 immediately below are transcribed in D major.



# MUSICAL EXAMPLE 6

Bars 1-4 from Verse 1 in "BRC", "Domino", and "I Don't Think So"

"Bright Red Chords"  
(2010)  
0:22  
I put the need - le in the groove

"Domino"  
0:06  
D5 I'm feel - ing sex - y and free

"I Don't Think So"  
0:04  
(8th notes are swung)  
You think you might have a chance I don't think so

3  
to a song that fits the mood

like glit - ter's rain - ing on me

You tell - in' me to be nice I don't think so

73. The similarities in melodic contour and melodic rhythm in Verse 1 in "I Don't Think So" and "BRC" are demonstrated in Tracks 5 and 6 on **Audio Exhibit 2**. Track 5 begins with the opening 2 bars in Verse 1 in "I Don't Think So" followed by the opening 2 bars in Verse 1 in "BRC." After a 2-second silence, that side-by-side placement is repeated. Track 6 begins with the opening 4 bars in Verse 1 in "I Don't Think So" followed by the opening 4 bars in Verse 1 in "BRC." After a 2-second silence, that side-by-side placement is repeated.

74. The similarities in melodic contour and melodic rhythm in Verse 1 in "I Don't Think So" and "Domino" are demonstrated in Tracks 7 and 8 on **Audio Exhibit 2**.

Track 7 begins with the opening 2 bars in Verse 1 in "I Don't Think So" followed by the opening 2 bars in Verse 1 in "Domino." After a 2-second silence, that side-by-side placement is repeated. Track 8 begins with the opening 4 bars in Verse 1 in "I Don't Think So" followed by the opening 4 bars in Verse 1 in "Domino". After a 2-second silence, that side-by-side placement is repeated.

#### **"BRC" AND "DOMINO" IN THEIR ENTIRETY**

75. Based on my analysis, I found that there are no significant similarities in structure, harmony, rhythm, melody, lyrics, meter, tempo, instrumentation, and/or key, *individually or in combination*, between "BRC" and "Domino" and no similarities, *individually or in combination*, that suggest that any expression in "Domino" was copied from "BRC".

76. There is a similarity in the Verse melodies in "BRC" and "Domino", but (1) their Verse melodies are not nearly identical, (2) the similarity in Verse melodies represents pre-existing expression that was in Verse melodies in prior art, (3) the aggregate of four prior art songs embody the similarity in the Verse melodies in "BRC" and "Domino," and (4) two of the writers of "Domino" co-wrote two additional songs released prior to 2008 which incorporate melodic expression that is similar to the Verse melodies in "BRC" and "Domino."

77. In summary, on the basis of my analysis, I found that (1) there are no similarities that suggest that any expression in "Domino" was copied from "BRC", (2) "Domino" was independently created, and (3) the similarity between "BRC" and "Domino" represents pre-existing expression .

#### **RESPONSE TO THE REPORT OF DR. DAVID STERN**

78. As noted in Paragraph 7 above, I have been asked to review an undated and unsigned 4-page report which I understand is written by Dr. David Stern, hereafter the Stern report. The Stern report, identified as "LOOMIS 003212" through LOOMIS 003215" finds: "...all musical materials other than the verses are unrelated in both



songs, that would include chorus, prechorus, and bridge material". [Stern report, page 1] Moreover, at the beginning of the next paragraph, Dr. Stern reinforces his finding: "It is only in the verses where the musical ideas coincide." [Stern report, page 1] I agree that the only relevant similarities are in the Verse sections in "BRC" and "Domino."

79. In his comparison of the guitar parts in the Verses in "BRC" and "Domino", Dr. Stern finds: "[T]he guitar patterns are clearly quite different from one another." [Stern Report, page 2] I agree that the guitar parts that play during the Verses in "BRC" and "Domino" are "clearly quite different from one another".

80. Regarding what I refer to as Phrase 1 and what Dr. Stern refers to as "Phrase A", Dr. Stern finds that these corresponding 2-bar melodic phrases that open the respective Verses in "BRC" and "Domino" are "...essentially the same melody" and "share essentially the same scale degrees and rhythms." [Stern Report, page 3] However, as analyzed and demonstrated in Paragraphs 28-34 above, the pitch sequences (i.e., "scale degrees") and the melodic rhythms in what Dr. Stern calls Phrase A are not nearly "the same" in "BRC" and "Domino". Moreover, with respect to the Verses in "BRC" and "Domino" in their entirety, the Stern report fails to discuss the substantial differences in the second half of the Verses in "Domino" as compared with the Verses in "BRC" as illustrated in Musical Example 2 above and in **Visual Exhibits A, B, and C** attached to this report.

81. The Stern report fails to provide an analysis of the overall structures in "BRC" and "Domino" which include many differences. (See Paragraphs 11-15 above)

82. The Stern report fails to provide an analysis of the harmony (chords) in "BRC" and "Domino" which are notably different. (See Paragraphs 16-18, and 37 as well as Musical Examples 1 and 2 above, and **Visual Exhibits A, B, and C** attached to this report)

83. The Stern report fails to proffer any findings regarding any prior art, and



does not acknowledge that the similarity in the vocal melodies in the Verses sections in "BRC" and "Domino" "BRC" (1) represents pre-existing expression that was in Verse melodies in prior art and (2) two of the writers of "Domino" co-wrote two songs released prior to 2008 which incorporate melodic expression that is similar to the Verse melodies in "BRC" and "Domino."

### CONCLUSIONS

84. Based on my analysis, I found that there are no significant similarities in structure, harmony, rhythm, melody, lyrics, meter, tempo, instrumentation, and/or key, individually or in combination, between "BRC" and "Domino" and there are no similarities, individually or in combination, that suggest that any expression in "Domino" was copied from "BRC."

85. There is a similarity in the Verse melodies in "BRC" and "Domino", but (1) their Verse melodies are not nearly identical, (2) the similarity in Verse melodies represents pre-existing expression that was in Verse melodies in prior art, (3) the aggregate of four prior art songs analyzed above embody the similarity in the Verse melodies in "BRC" and "Domino," and (4) two of the writers of "Domino" co-wrote two additional songs released prior to 2008 which incorporate melodic expression that is similar to the Verse melodies in "BRC" and "Domino."

86. On the basis of (1) my analysis of "BRC" and "Domino", and (2) my analysis of prior art which includes two songs co-written by two of the co-writers of "Domino", I found that the Stern report fails to proffer any musicological evidence to support a claim that any musical or lyrical expression in "Domino" was copied from "BRC". Moreover, the Stern report fails to analyze and consider the many differences between the overall structures and harmonies in "BRC" and "Domino", as well as the substantial differences in the vocal melodies in the second half of the Verses in "Domino" as compared with the Verse melodies in "BRC". The Stern report also fails to provide any opinion as to whether the similarity it finds in the vocal melodies in the Verses in "BRC" and "Domino" represents expression that predates "BRC". On that

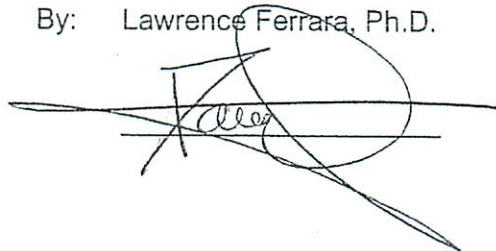
basis, the opinions and findings in the Stern report do not change any of my opinions or findings.

87. In summary and in keeping with the methodology I presented in Paragraph 10 above, on the basis of my (1) initial comparative analysis of the musical and lyrical compositions in "BRC" and "Domino" in their entirety, (2) comparative analysis of each of their component elements individually and in combination, (3) comparative analysis of prior art, and (4) comparative analysis of "BRC" and "Domino" in their entirety within the context of the analysis of their component parts and prior art I found that (a) there are no similarities that suggest that any expression in "Domino" was copied from "BRC", (b) "Domino" was independently created, and (c) the similarity between "BRC" and "Domino" represents pre-existing expression.

Respectfully submitted,

September 11, 2013

By: Lawrence Ferrara, Ph.D.

A handwritten signature in black ink, appearing to read "L. Ferrara", is written over a set of three horizontal lines. The signature is stylized and somewhat obscured by the lines.

# **VISUAL EXHIBIT A**



Intro 0:00 (D major)

8 D5 F#5 G5 A5 D5 F#5 G5 E5 I put the need-le in the

VERSE 1 0:24 13 D5 F#5 G5 A5 D5 F#5 G5 E5 I watch the re-cord spin a-

17 D5 F#5 G5 A5 D5 F#5 G5 E5 round- in - to a wall of sound - yeah -

CHORUS 1 0:40 21 G A G A Bright red chords on jet black vi - nyl Dan-cin' to the beat, - the mu-sic is -

25 G A G A pri-mal Bright red chords on jet black vi - nyl Dan-cin' to the beat, - the mu-sic is -

RE-INTRO 0:56 29 D5 F#5 G5 A5 D5 F#5 G5 E5 It hits my hips be-fore my

VERSE 2 1:04 33 D5 F#5 G5 A5 D5 F#5 G5 E5 mind my feet are wor-kin' o-ver- time Shoes slap-pin' on the

Bright Red Chords

37 D<sup>5</sup> F<sup>#5</sup> G<sup>5</sup> A<sup>5</sup> D<sup>5</sup> F<sup>#5</sup> G<sup>5</sup> E<sup>5</sup>

floor\_ C'-mon let's rock\_ some more\_ yeah\_

CHORUS 2 1:20

41 G A G A

Bright red chords on jet black vi - nyl Dan-cin' to the beat, the mu-sic is\_

45 G A G A

pri-mal Bright red chords on jet black vi - nyl Dan-cin' to the beat, the mu-sic is\_

BRIDGE 1:36

49 G<sup>5</sup> G<sup>#5</sup> A<sup>5</sup> B<sup>b5</sup> B<sup>5</sup> (gtr.)

Drenched in sweat, but we ain't done yet We'll be drenched in sweat, but we ain't done

SOLO 1:44

53 N.C. A<sup>5</sup> D<sup>5</sup> F<sup>#5</sup> G<sup>5</sup> A<sup>5</sup>

Bright red chords on jet black vi - nyl Dan-cin' to the beat, the mu-sic is\_

57 D<sup>5</sup> F<sup>#5</sup> G<sup>5</sup> A<sup>5</sup> D<sup>5</sup> F<sup>#5</sup> G<sup>5</sup> E

Bright red chords on jet black vi - nyl Dan-cin' to the beat, the mu-sic is\_

CHORUS 3 2:00

61 N.C.

Bright red chords on jet black vi - nyl Dan-cin' to the beat, the mu-sic is\_

65 G A G A


pri-mal Bright red chords on jet black vi - nyl Dan-cin' to the beat, the mu-sic is\_

69 G A G A

pri-mal Bright red chords on jet black vi - nyl Dan-cin' to the beat, the mu-sic is\_

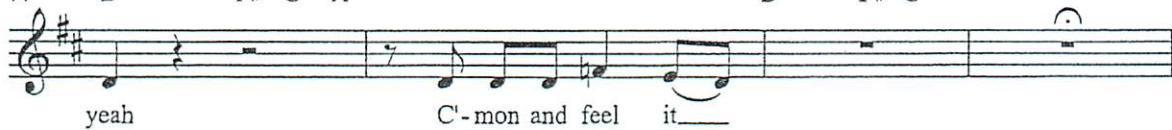
OUTRO 2:24

73 D<sup>5</sup> F<sup>#5</sup> G<sup>5</sup> A<sup>5</sup> D<sup>5</sup> F<sup>#5</sup> G<sup>5</sup> E<sup>5</sup>



pri - mal Oh

77 D F<sup>#5</sup> G<sup>5</sup> A<sup>5</sup> D<sup>5</sup> F<sup>#5</sup> G<sup>5</sup>



yeah C'-mon and feel it



# **VISUAL EXHIBIT B**

# Domino

(G major)

INTRO 0:00

G<sup>5</sup> G(sus4) G G(sus4)

(Gtr.)

I'm feel-ing sex-y and

VERSE 1 0:08

5 G<sup>5</sup> G(sus4) G G(sus4)

free\_\_\_\_\_ like glit-ter's rain-ing on me\_\_\_\_\_ You're like a shot of pure

9 G<sup>5</sup> G(sus4) G G(sus4)

gold\_\_\_\_\_ I think I'm 'bout to ex - plode\_\_\_\_\_ I can

13 G<sup>5</sup> G(sus4)

taste the ten - sion like a cloud of smoke in the air, now I'm

15 G G(sus4)

breath-ing like I'm run - ning 'cause you're ta - king me there Don't you know

17 G<sup>5</sup> G(sus4) G G(sus4)

\_\_\_\_\_ You spin me out of con - trol\_\_\_\_\_ Ooo, ooo, ooo, ooo

PRE-CHORUS 1 0:38

21 C(add9) Am<sup>7</sup> Em C/D

\_\_\_\_\_ We can do this all\_night, damn this love is skin tight ba-by come on\_\_\_\_\_ Ooo, ooo, ooo, ooo

25 C(add9) Am<sup>7</sup> Em C/D

\_\_\_\_\_ boom-ing like a bass\_drum, spark-ing up a rhy-thm ba-by come on\_\_\_\_\_ Ooo, ooo, ooo, ooo

CHORUS 1 0:53

29 C(add9) Am<sup>7</sup> Em C/D  
\_\_\_\_ Rock\_\_ my world\_\_ in-to the sun light Make\_\_ this dream\_\_ the best I've ev-er known

33 C(add9) Am<sup>7</sup> Em C/D  
Dir - ty danc - ing in the moon light Take\_\_ me down\_\_ like I'm a dom-i-no

37 C(add9) Am<sup>7</sup> Em C/D  
Ev' - ry sec - ond is a high light when\_\_ we touch\_\_ don't ev-er let me go

41 C(add9) Am<sup>7</sup> Em C/D  
Dirt - y danc - ing in the moon light Take\_\_ me down\_\_ like I'm a dom-i-no

RE-INTRO 1:23

45 G<sup>5</sup> G(sus4) G G(sus4) N.C.  
(Gtr.) You got me los-ing my

VERSE 2 1:31

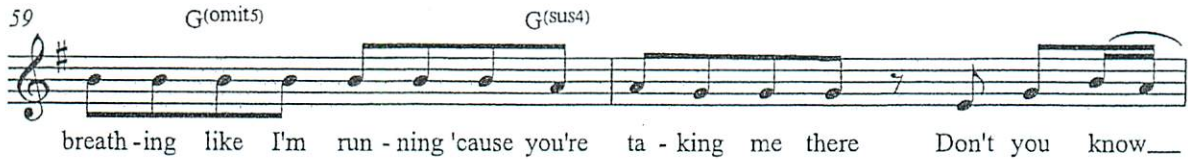
49 G<sup>5</sup> G(sus4) G G(sus4)  
mind\_\_ My heart beats out of time I'm see-ing Hol-ly-wood

53 G<sup>5</sup> G(sus4) G G(sus4)  
stars\_\_ You strum me like a gui - tar\_\_ I can

57 G<sup>5</sup> G(sus4)  
taste the ten - sion like a cloud of smoke in the air, now I'm



59 G(omit5) G(sus4)



breath-ing like I'm run-ning 'cause you're ta-king me there Don't you know\_\_


61 G<sup>5</sup> G(sus4) G G(sus4)



You spin me out of con-trol Ooo, ooo, ooo, ooo

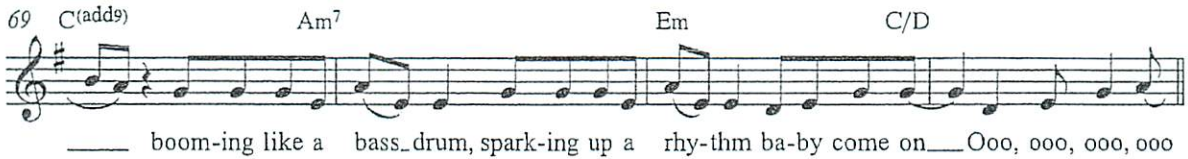
PRE-CHORUS 2 2:01

65 C(add9) Am<sup>7</sup> Em C/D



We can do this all night, damn this love is skin tight ba-by come on Ooo, ooo, ooo, ooo

69 C(add9) Am<sup>7</sup> Em C/D



boom-ing like a bass drum, spark-ing up a rhy-thm ba-by come on Ooo, ooo, ooo, ooo

CHORUS 2 2:16

73 C(add9) Am<sup>7</sup> Em C/D



Rock my world in-to the sun light Make this dream the best I've ev-er known

77 C(add9) Am<sup>7</sup> Em C/D




Dir - ty danc - ing in the moon light Take me down like I'm a dom-i-no

81 C(add9) Am<sup>7</sup> Em C/D



Ev' - ry sec - ond is a high light when we touch don't ev-er let me go,

85 C(add9) Am<sup>7</sup> Em C/D



Dirt - y danc - ing in the moon light Take me down like I'm a dom-i-no

BRIDGE 2:47

89 C(add9) Am<sup>7</sup> Em C/D  
Ooo ba-by ba-by got me feel-ing so right Ooo ba-by ba-by danc - ing in the moon light

93 C(add9) Am<sup>7</sup> Em C/D  
Ooo ba-by ba-by got me feel-ing so right Ooo ba-by ba-by danc - ing in the moon light

97 C(add9) Am<sup>7</sup> Em C/D  
Ooo ba-by ba-by got me feel-ing so right Ooo ba-by ba-by danc - ing in the moon light

101 C(add9) Am<sup>7</sup> Em C/D  
Ooo ba-by ba-by got me feel-ing so right Ooo ba-by ba-by babe Ooo, ooo, ooo, ooo

CHORUS 3 3:17

105 C(add9) Am<sup>7</sup> Em C/D  
\_\_\_ Rock my world in-to the sun light Make this dream the best I've ev-er known

109 C(add9) Am<sup>7</sup> Em C/D  
Dir - ty danc - ing in the moon light Take me down like I'm a dom-i-no

113 C(add9) Am<sup>7</sup> Em C/D  
Ev' - ry sec - ond is a high light when we touch don't ev-er let me go,

117 C(add9) Am<sup>7</sup> Em C/D N.C.  
Dirt - y danc - ing in the moon light Take me down like I'm a dom-i-no

# **VISUAL EXHIBIT C**



# Domino

(D major)

INTRO 0:00

D<sup>5</sup> D(sus4) D D(sus4)

(Gtr.)

I'm feel-ing sex-y and

VERSE 1 0:08

5 D<sup>5</sup> D(sus4) D D(sus4)

free like glit-ter's rain-ing on me You're like a shot of pure

9 D<sup>5</sup> D(sus4) D D(sus4)

gold I think I'm 'bout to ex - plode I can

13 D<sup>5</sup> D(sus4)

taste the ten - sion like a cloud of smoke in the air, now I'm

15 D D(sus4)

breath-ing like I'm run - ning 'cause you're ta - king me there Don't you know

17 D<sup>5</sup> D(sus4) D D(sus4)

You spin me out of con - trol Ooo, ooo, ooo, ooo

PRE-CHORUS 1 0:38

21 G(add9) Em<sup>7</sup> Bm G/A

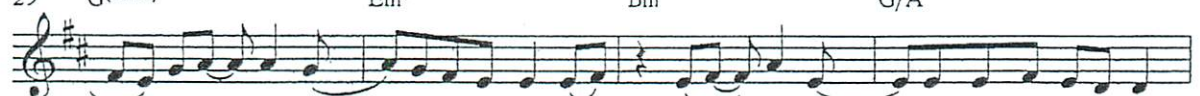
We can do this all night, damn this love is skin tight ba-by come on Ooo, ooo, ooo, ooo

25 G(add9) Em<sup>7</sup> Bm G/A

boom-ing like a bass\_drum, spark-ing up a rhy-thm ba-by come on Ooo, ooo, ooo, ooo

CHORUS 1 0:53

29 G(add9) Em<sup>7</sup> Bm G/A



Rock my world in-to the sun light Make this dream the best I've ev-er known

33 G(add9) Em<sup>7</sup> Bm G/A



Dir - ty danc - ing in the moon light Take me down like I'm a dom-i-no

37 G(add9) Em<sup>7</sup> Bm G/A



Ev' - ry sec - ond is a high light when we touch don't ev-er let me go

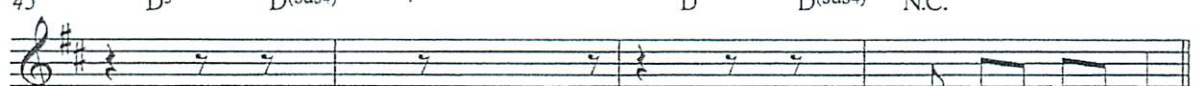
41 G(add9) Em<sup>7</sup> Bm G/A



Dirt - y danc - ing in the moon light Take me down like I'm a dom-i-no

RE-INTRO 1:23

45 D<sup>5</sup> D(sus4) D D(sus4) N.C.



(Gtr.) You got me los-ing my


VERSE 2 1:31

49 D<sup>5</sup> D(sus4) D D(sus4)




mind My heart beats out of time I'm see-ing Hol-ly-wood

53 D<sup>5</sup> D(sus4) D D(sus4)



stars You strum me like a gui - tar I can

57 D<sup>5</sup> D(sus4)



taste the ten - sion like a cloud of smoke in the air, now I'm



59 D(omits) D(sus4)

breath-ing like I'm run-ning 'cause you're ta-king me there Don't you know\_\_

Detailed description: Musical staff in treble clef with a key signature of two sharps (F# and C#). The melody consists of eighth and quarter notes. Chords D(omits) and D(sus4) are indicated above the staff.

61 D<sup>5</sup> D(sus4) D D(sus4)

\_\_\_\_ You spin me out of con-trol\_\_\_\_ Ooo, ooo, ooo, ooo

Detailed description: Musical staff in treble clef with a key signature of two sharps. The melody includes a half note followed by eighth notes. Chords D<sup>5</sup>, D(sus4), D, and D(sus4) are indicated above the staff.

PRE-CHORUS 2 2:01

65 G(add9) Em<sup>7</sup> Bm G/A

\_\_\_\_ We can do this all\_night, damn this love is skin tight ba-by come on\_\_Ooo, ooo, ooo, ooo

Detailed description: Musical staff in treble clef with a key signature of two sharps. The melody consists of eighth notes. Chords G(add9), Em<sup>7</sup>, Bm, and G/A are indicated above the staff.

69 G(add9) Em<sup>7</sup> Bm G/A

\_\_\_\_ boom-ing like a bass\_drum, spark-ing up a rhy-thm ba-by come on\_\_Ooo, ooo, ooo, ooo

Detailed description: Musical staff in treble clef with a key signature of two sharps. The melody consists of eighth notes. Chords G(add9), Em<sup>7</sup>, Bm, and G/A are indicated above the staff.

CHORUS 2 2:16

73 G(add9) Em<sup>7</sup> Bm G/A

\_\_\_\_ Rock\_\_ my world\_\_ in-to the sun light Make\_\_ this dream\_\_ the best I've ev-er known

Detailed description: Musical staff in treble clef with a key signature of two sharps. The melody consists of eighth notes. Chords G(add9), Em<sup>7</sup>, Bm, and G/A are indicated above the staff.

77 G(add9) Em<sup>7</sup> Bm G/A

Dir - ty danc - ing in the moon light Take\_\_ me down\_\_ like I'm a dom-i-no

Detailed description: Musical staff in treble clef with a key signature of two sharps. The melody consists of eighth notes. Chords G(add9), Em<sup>7</sup>, Bm, and G/A are indicated above the staff.

81 G(add9) Em<sup>7</sup> Bm G/A

Ev' - ry sec - ond is a high light when\_\_ we touch\_\_don't ev-er let me go,

Detailed description: Musical staff in treble clef with a key signature of two sharps. The melody consists of eighth notes. Chords G(add9), Em<sup>7</sup>, Bm, and G/A are indicated above the staff.

85 G(add9) Em<sup>7</sup> Bm G/A

Dirt - y danc - ing in the moon light Take\_\_ me down\_\_ like I'm a dom-i-no

Detailed description: Musical staff in treble clef with a key signature of two sharps. The melody consists of eighth notes. Chords G(add9), Em<sup>7</sup>, Bm, and G/A are indicated above the staff.



117 G(add9) Em7 Bm G/A N.C.

Dir - ty dance - ing in the moon light  
Take me down like I'm a dom-i-no

113 G(add9) Em7 Bm G/A

Ev' - ry sec - ond is a high light  
when we touch don't ev-er let me go,

109 G(add9) Em7 Bm G/A

Dir - ty dance - ing in the moon light  
Take me down like I'm a dom-i-no

105 G(add9) Em7 Bm G/A

Rock my world in-to the sun light  
Make this dream the best I've ev-er known

CHORUS 3 3:17

101 G(add9) Em7 Bm G/A

Ooo ba-by ba-by got me feel-ing so right  
Ooo ba-by ba-by babe Ooo, ooo, ooo, ooo

97 G(add9) Em7 Bm G/A

Ooo ba-by ba-by got me feel-ing so right  
Ooo ba-by ba-by dance - ing in the moon light

93 G(add9) Em7 Bm G/A

Ooo ba-by ba-by got me feel-ing so right  
Ooo ba-by ba-by dance - ing in the moon light

89 G(add9) Em7 Bm G/A

Ooo ba-by ba-by got me feel-ing so right  
Ooo ba-by ba-by dance - ing in the moon light

BRIDGE 2:47